Title:
Max Poulter Memorial Lecture

MAX POULTER MEMORIAL LECTURE.

by

HON. DON DUNSTAN, Q.C., M.P.

I feel very honored to have been asked to give the Max Poulter Memorial Lecture. I knew Dr. Poulter in the Labor Party as a member of its Federal Standing Committees for some time before he was selected as a Senate candidate. His ability to produce well documented, soundly argued, specific proposals from Labor Party policy had marked him for a great Parliamentary career, and it was natural that he should have been marked for early advancement in the Party. His tragic death shortly after his election was a blow to all his friends and to the Labor movement throughout Australia. I am very glad to see Mrs. Poulter here tonight. She must have been, as we all were, enormously proud of her husband.

In numbers of Nation States today the constitution whether an evolved and unwritten one like that of Great Britain or a specifically enacted one such as that of New Zealand simply provides that Government is to legislate for the peace, order and good Government of its citizens. There is no limitation upon the power of Governments to legislate according to the wishes of the people and according to the needs of the times in which they are legislating. When the States and Provinces of Australia were originally given constitutions a similar situation obtained for the State Governments of Australia. They were to legislate for the peace, order and good Government of their citizens and within their State borders.

At the turn of the century, however, it had become evident that there were a number of matters of mutual concern which were better settled and administered at the national level and so the States of Australia should join together to deal with these matters. At this time it was not the general view of citizens in this country that it was the responsibility of Governments to manage the general state of the economy, to concern themselves with the level of employment or the stability of the

currency, the level of credit in thecommunity or the rate and direction of economic development. Laissez-faire was still a popular economic doctrine. The things which concerned the delegates to the conventions which worked out the Australian Federal Constitutionwere provisions for the defence of the country, unified post office system, and that we should put an end to customs barriers between the States. The National Government was not seen as a Government to be responsible for economic planning. Indeed although certain powers in relation to laws with respect to banking other than State banking were given to the Federal Parliament the conventions clearly understood that there would be no power for the Commonwealth Government itself to enter the banking field. That was an understanding of the wording which they had provided in the constitution with which later the High Court disagreed. The convention delegates were State politicians concerned with the interests of their own areas and anxious to see that the things that concerned the ordinary citizen continued to be dealt with by State Governments - Governments having the general power of legislating for peace, order and good Government. The new National Parliament was only to be given certain specific powers and these were subject to a number of general restrictions. It must be remembered that these men were living at a time when there was no air or motor communication between the States. There was not a great deal of interstate rail traffic. It was indeed a horse and buggy era. The politicians of that time were no more far-sighted and capable of forecasting future economic events and social development than the politicians of today. They are now often referred to as the Founding Fathers with a couple of capital Fs, and spoken of in terms of reverence as if they were something more than men and anyone who now suggests that what they wrote for us is inadequate for the present day is treated as something less than a man.

The Federal constitution is a complicated document. The relationship between the Federal Government and the State Governments is but little clearly understood by the average citizen in this community. It is common for many citizens to confuse the areas of activity of State and Federal Governments. In two years as Minister for Social Welfare in South Australia, I received a stream of letters every week to ask why I wasn't providing better old age pensions and I had painstakingly to write to each one of these correspondents to explain that old age pensions were the responsibility of the Commonwealth and not of the State Parliament. The constitution is extremely difficult to alter. The only effective means of altering it is by carrying a referendum which as far as transfers of powers as between the States and the Commonwealth are concerned must be carried by a majority of citizens and carried in a majority of States. Since the average citizen does not for the most part understand the provisions of the constitution and finds constitutional issues difficult, it is all too easy for the opponents of any change to confuse the average citizen on a constitutional referendum and induce him because of his state of doubt to vote No as a measure of safety. As the century wore on the attitude of people generally to the responsibilities of Governments has changed. It is now widely accepted that Governments should be responsible for planning development, should be responsible for the general state of the economy, should control the level and to some extent the direction of credit. Moreover the matters of mutual concern in the economy between citizens of various States are now so many and varied that we no longer have a series of States tentatively engaged in a few interstate transactions but we have a national economy illogically split up by the geographic boundaries of States drawn in such a way as to bear no relationship whatever to developing economic regions and to the mutual interest and economic activity of

citizens on either side of these borders. We have a national economy developed to the stage where the Governments of countries with comparable economies have found it necessary to have a wide regulation of economic activity but where we in our community find it constitutionally difficult or impossible to prescribe similar regulations and so to ensure orderly development and growth and the protection of our citizens. Let me give just two examples. All comparable countries with our own have now had for some time legislation with regard to restrictive trade practices. The United States of America, that haven of free enterprise and rugged individualism has had the Sherman Acts and their sequels since the 1890's. In Australia the directors of numbers of major concerns have been able to get away with restrictive trade practices and monopoly activity clearly contrary to the public interest and for which in the United States of America they would face gaol sentences. The Commonwealth Government only has power to make laws with relation to restrictive trade practice activities so far as these are involved in interstate transactions. The early attempts of Labor Governments at the Commonwealth level to legislate in this area were held largely invalid by a decision of the Privy Council in what was known as the Coal Vend Case. Subsequently many State Governments, including Labor Governments in this State, endeavoured to legislate in the area but found that it was so difficult to separate intrastate transactions, (the only area in which they had any power) from interstate transactions that their measures were ineffective. The Commonwealth has now legislated in relation to interstate restrictive trade activities in a way which has provided, I believe, the weakest controls upon this kind of activity of any legislation in comparable countries. However, the measure does not apply to intrastate transactions except in the State of Tasmania. There the State Parliament has referred to the Federal Parliament the power of the State to

legislate for intrastate transactions. A similar attempt in South Australia failed because our Upper House which has been elected on a gerrymandered electorate and is completely unrepresentative of the general citizens in the State, laid the Bill aside. The other States of the Commonwealth have not acted in any way to provide that the Commonwealth Restrictive Trade Practices Tribunal will have power in relation to intra-state restrictive trade practices. This was a real blow to the development of industry in South Australia as the Government had been approached about the establishment of industries in South Australia which failed to come to that State because they found that restrictive trade practices within the State were such that either their sources of supply or their markets were tied up and they could not break into the field.
As numbers of these exist and are clearly contrary to the public interest action against restrictive trade practices in Australia must remain ineffective to a considerable degree because of our constitutional divisions. Referenda presented to the people in the early part of this century seeking power for the Common-wealth to legislate in the area of monopolies were defeated.

The second example is that of Section 92 of the constitution. While our Federal Government was given power in very similar terms to those of the United States Federal Government to legislate in respect of interstate trade, Section 92 of the constitution, which has no counterpart in the United States constitution, provides that trade commerce and intercourse between the States shall be absolutely free, and this has been held by the Courts to mean free of burden. This has meant that it is difficult to operate in Australia an effective national roads policy. More and more of transport interstate of goods is by road, yet because of this section of the constitution it is impossible to demand of interstate road hauliers an effective and proper contribution to the maintenance of the roads with whose

surfaces their heavy vehicles play such havoc. While our economy is undoubtedly now one in which the main features are those of economic inter-dependence of citizens in one part of Australia with those of another, difficulties with unemployment, for instance in South Australia, have come about through a decline in the markets for our pressed metal goods, motor cars and home appliances, largely in Queensland and New South Wales. Only 15% of our product in these areas is sold in South Australia. Since 85% of our major industrial products are sold in the Eastern States of Australia, our whole employment situation depends upon the state of markets there, and if the Governments responsible, particularly the Federal Government, choose to allow the market for consumer durables to be depressed in order to relieve inflationary pressure resulting from increased defence spending, then this, of course, hits South Australia very hard, but these facts must make it clear that the economy of Australia must be treated as a whole and that a Government, in order to control that economy effectively to maintain full employment and a rate of expansion similar to that of competing industrial nations, must exercise powers not nearly as blunt as those to which the Federal Government is at present restricted. While then that is the outstanding feature of our present-day economy, we have no Government in Australia with the powers of Governments elsewhere in the world in comparable economies, able to exercise the powers which those governments have found it necessary to exercise for the protection and wellbeing of their citizens. We have instead seven sovereign Parliaments, each required to operate within a limited field and none able to operate in a number of fields found elsewhere necessary to Governments. In these circumstances it is clear that the majority of citizens in Australia are sick of this situation. They rightly consider that they are burdened with far too many politicians exercising powers on their behalf often ineffectively. The Labor Party's policy of amendment of the Commonwealth Constitution to

clothe the Commonwealth Parliament with unlimited powers and with a duty and authority to create States possessing delegated constitutional powers is one then that has a great deal of attraction to many citizens. To have one sovereign Parliament with subordinate provincial or county Governments would mean that Australia could effectively cope with numbers of problems facing it today, concerning which its Governments today are ineffective and inhibited, but there are very great difficulties in the way of achieving this aim. It is true that the Federal Constitution could be amended to clothe the Commonwealth Parliament with power to make laws for peace, order and good Government of the Commonwealth without the restrictions contained in section 51, which specify the particular subjects only on which such laws may now be made by the Commonwealth. The restrictions could be removed by the passing of a referendum by a majority of citizens of the Commonwealth and by a majority of citizens in a majority of States. However, then to give the Parliament power to replace the States with subordinate legislatures having of course different boundaries from the present States, is quite another matter. The last paragraph of section 128 of the Federal Constitution reads as follows:-

> "No alteration of the Constitution diminishing the proportionate representation of any State in either House of the Parliament or the minimum number of representatives of a State in the House of Representatives or increasing, diminishing or otherwise altering the limits of the State or in any manner affecting the provisions of the constitution in relation thereto shall become law unless the majority of electors voting in that State approve the proposed law."

This means that we would have to get a majority of electors in each State affected, and as all States would be affected,

a majority of electors in every State. In view of the history of referenda in Australia the prospect of success is at this stage rather gloomy. In the previous decade the Menzies Government in Canberra appointed a Constitutional Review Committee with representation from both sides of the House, and this Committee reported strongly in favour of a number of substantial amendments to the Federal Constitution, particularly in the areas of exercising power to direct the economy and development. Only one referendum has been put concerning the recommendations of the Committee, at that a very minor recommendation indeed, which was that the nexus between the numbers of the House of Representatives and the Senate should be broken so that it should be possible to increase the numbers of the House of Representatives without having an increase in the Senate at the same time equal to half the increase in the House of Representatives. The referendum campaign produced a 'No' vote and it was apparent that a majority of citizens thought that they were voting for no increase in the number of politicians, whereas in fact the question they were deciding was whether there should be a marginal increase of 12 to 14 members in the House of Representatives or a minimum increase in the Federal Parliament of 72. Very few of them apparently realized that it was the latter they voted for. It has been urged that one bold and sweeping reform such as a change to a unitary constitution would be a simpler matter to put at a referendum than the particular changes as between State and Federal powers or the changes in procedures which have been put to the people previously. But it is apparent from what I have already said that the referendum itself would not be so simple a matter and would require even more widespread support than previous referenda would have required to be carried. What is more,it is not possible to put to people in Australia the suggestion that they should change to a unitary constitution with provincial or county governments and subordinate legislatures unless you can show what powers those provincial Governments would be likely to have and in what areas they would operate. That's not just a matter of drawing lines on a map.

The counties or provinces would have to have an effective basis already in regional organization for the proposal to have any appeal at all. It couldn't be just an arbitrary map. The provinces would have to be natural entities. No such entities really exist now. Significant steps for their development were taken by the Chifley Government before it was defeated and a report on the progress then made is contained in Regional Planning in Australia published by the Department of Post-War Reconstruction in 1949. By agreement with the States they had then been divided into a number of regional planning areas, Queensland into 18, New South Wales 20, Victoria 13, Tasmania 6, South Australia 20 and Western Australia 16. These were drawn within State boundaries. The aim was that as organizations within the areas developed, those at State boundaries were likely to combine with those on the other side of State boundaries and that there would be a natural progression in amalgamations of planning areas as a result of common economic interests which in due course would ignore the limitations of State boundaries. Planning authorities' development associations were already working on some of these and it was quite a good beginning, but upon the election of the Menzies Government in 1949 the whole plan was quite ruthlessly scrapped and a great deal of planning and development which could have taken place in Australia in the interim simply has not occurred. Such a plan would have to be got under way once again and have time to develop before it will be possible to suggest areas of county government in Australia. It is plain then that a great deal of time must elapse before there is any possibility of altering the constitution in Australia to a unitary one. There are, however, forces tending to the collapse of the Federal system in addition to those which I have mentioned which will help to bring a reform about. The financial arrangements between the States and the Commonwealth and the way that these have been operated by the present Federal Government

will eventually bring any kind of effective Government under the Federal system to a standstill. Under the Financial Agreement of the 1920's which is now part of the Federal Constitution of Australia the States and the Commonwealth meet in Loan Council to decide the amount of the year's loan raisings. However, for many years the amounts which it haa been possible to borrow for Government loan have been less than the total loan programme agreed by the Commonwealth and the States. Therefore, the Commonwealth Government out of revenues has underwritten the loan programme, and having raised money by way of taxes from the citizens of the States it then lends them back to the citizens of the States through the State Government and charges interest on them. It is no longer possible because of this system for the States to do other than agree to the amount which the Commonwealth fixes as the total loan programme although this is quite inadequate for the basic works undertakings, housing and education in Australia, things for which the State Governments have responsibility. The Commonwealth Government is denying investment in the public sector in basic development and education at the level sought by most citizens, and at the same time is squeezing the budgets of every State by demanding that a larger and larger proportion of the States' annual budget goes to interest payments every year. The Commonwealth is using its revenues to force the States into these interest payments and at the same time is using its revenues to reduce its own interest burdens so that a smaller and smaller proportion of the Commonwealth budget goes to interest every year. While the only exclusive taxing power which the Commonwealth has by the constitution is in the imposition of customs and excise duties, nevertheless it has been able in the income tax sphere to obtain by virtue of the Federal Constitution a priority in payment to the Commonwealth of income tax and has then so far taken up taxable capacity that it is not possible for the States to invade the sphere of income tax.

It makes financial reimbursements to the States out of income tax which it raises on condition that they do not impose an income tax but in this area again it has presented the States with a number of financial difficulties and forced them into decisions which are unjust to their citizens and are generally unpalatable. All State budgets are stretched to the limit. If additional expenditures are required of the States then they must either raise taxes and charges or reduce their services in the long run. Under the terms of the financial agreement it is not possible for the States to run a deficit budget for more than a very limited period because in order to meet their deficits they have no power to issue Treasury Bills and may not borrow for more than an extremely short period moneys from their own banking system. The only way to finance a deficit then is to use up cash balances held at Treasury for various working and deposit accounts, but this is not something that can go on forever. A reasonable degree of liquidity in Treasury funds always has to be held so that there can be no doubt that the State can always meet the obligations with which it is faced and so States unlike the Commonwealth are not in a position to run deficit budgets indefinitely. Each time there is a decision by the Conciliation and Arbitration Court to increase wages and salaries the States have to pay their own employees these wage increases. The Commonwealth has to pay its employees the increases but the rise in the wage level results in an increase in Commonwealth revenues of decidedly greater proportions than the pay-out which the Commonwealth has to make to its own employees; the Commonwealth does not, however, return out of its revenue to the States sufficient to cover the extra expense to them of each wage increase. Therefore the States have had to increase regressive taxes and charges on State instrumentalities in the State services by 100% in the last seven years, or at least they have had to alter these in order to get a 100% increase in revenue in the last seven years from the areas of State

taxation and State charges. At the same time, without altering its taxation rates, the Commonwealth both from inflation and from increased business activities has had an increase in its progressive tax revenues of 100%, but it has only returned an increase to the States during that period of 70% on the amount of financial reimbursement from these taxes paid to the States. It is quite obvious that this is putting the States in an increasingly difficult position. They have insufficient money to meet their responsibilities in the areas of basic development and education but in order to do better or even to keep up with the existing standard of services they are having to increase regressive taxes which fall heavily upon the poorer sections of the community. The position of State Governments in carrying out their responsibilities is becoming increasingly difficult in consequence and this is likely to make people seek some alternative from the present constitutional arrangements. What then is the role of a State Labor Government in all this? It is clear that despite the matters I have mentioned State Governments will be in operation for some decades yet. They have great areas of responsibility. The services which they provide are services which are of vital concern to the average citizen. It is vital that State Labor Governments be in office to maintain services. We have to see that basic public utility services are provided to the community at the cheapest possible rate and with adequate administration. Unlike our opponents in the Liberal Party, we do not regard public undertakings as unfortunate evils which it may be distressingly necessary to keep on. While to us as "socialists sans doctrine" we do not consider there is any necessary magic about public enterprise or private undertakings, (we consider each can play its part in the community,) the question for socialists is - is each sector of the economy meeting the social needs of the community and are the decisions as to the nature of development, the level of employment, the level of

economic activity taken by people who are responsible to the citizens and not by those who can wield irresponsible economic power without answering to those whom they affect? To a Labor Government then, a great deal of basic development can properly be undertaken by public enterprise and so to a Labor Government in South Australia the discovery of natural gas meant that we would be determined that natural gas be provided to industry in the industrial areas of the State at a reasonable price, the gas piped by and the price determined by a public utility. We do not believe it proper to hand over to an exploring company the right to exploit a gasfield to pipe the gas and to charge the community as a monopoly in the field what it likes as is the case in Queensland.

A State Labor Government also can pioneer social reforms. It has been possible for us in South Australia to take many steps with regard to our Aborigine population which are setting the pattern for Aborigines' administration in the Commonwealth. Let me tell you what we have done here. We believed, unlike the other States, that a policy of assimilation demanding of the aborigine that his only future was to be so absorbed into the European community that the only discernible difference was the colour of his skin, was arrogant, impossible of achievement and morally wrong. The Aborigines are not, as so many people seem to think that they are, a primitive, stone-age people. They are a people who over 18,000 years have developed an extraordinarily complex social structure with a culture concentrating on their social relationships on myth, dream life dance and ceremonial of the tribe completely unconcerned with the continued accumulation of material things. It was our belief in South Australia that it was necessary to give to Aborigine people the widest possible area of choice for their future. If they wished to be completely absorbed into the European community then every facility should be given to them for that. If they wished to live in a detribalised situation but in

association with other people of the aborigine race then they should have that opportunity. If they wish to live on reserve lands in an aborigine community but going off to work in the general community or developing co-operative settlements albeit in a de-tribalized fashion then they should have the right to do so. If they wish to live in a tribal situation merely adapting so far as was necessary to their contact with a European community which had different laws, (for instance about criminal matters) from their own, then they should have an opportunity to do this. Therefore, the policy we adopted was one of Integration giving them the widest possible choice as to the manner in which they would fit into the materialist and European community which has now surrounded them. There were three steps we believed had to be taken about this and we have taken each of them. The first was to remove from aborigines all legal restrictions by virtue of race. The old protection legislation the last vestiges of which seem to linger on in the State of Queensland have been swept away in South Australia. No aborigine is under any disability whatever by virtue of his race and he has the same rights and responsibilities as other citizens. Secondly, we had to remove the resentment of aborigines about the way in which they had been dealt with. If an aborigine has a very large chip on his shoulder - and aborigines in Australia have every reason to have an outsize one - it is difficult to get his co-operation in plans for his advancement. It is not easy to get the co-operation of resentful people. There were two main grounds for resentment. The first relates to land rights. The aborigines are the only comparable indigenous people who have been given no rights to land. The American and Canadian Indians, the Eskimos and the Maoris all had treaty rights establishing tribal title to large areas of land. As a people what has happened in Australia is that the aborigines have had certain lands reserved for them which were Crown lands which could be removed from them by mere proclamation, and as you well know in this State where valuable mineral deposits have been found

upon aborigine lands aborigines have not been paid the royalties and they have been removed from the areas which were their normal tribal reserve. In Western Australia on the borders of South Australia an area around Giles was simply excised from the Central Aborigines Reserve without any compensation to the aborigines and handed over to a nickle mining company. This sort of thing has caused the most bitter resentment amongst aborigines. In South Australia at the founding of the province the aborigines were guaranteed their lands. Under Letters Patent founding the Province, it is stated : "Nothing in these Our Letters Patent contained shall affect or be construed to affect the rights of any Aboriginal Natives of the said Province to the actual occupation or enjoyment in their own persons or in the persons of their descendants of any lands therein now actually occupied or enjoyed by such Natives." A plan was approved by the House of Commons for the provision of developed land for Aborigines and guarantees were exacted from the Commissioners for South Australia by the House of Commons that Aborigines would not be deprived of their lands without due compensation and without their agreement. Their rights to their lands were to be maintained. None of these well-intentioned proposals was ever carried out and the Aborigines in South Australia were in the same sorry deprived and dependent condition as Aborigines elsewhere in Australia. So we have passed an Aborigines Land Trust Act setting up a board of trustees consisting entirely of Aborigines to whom are being transferred Aborigine reserve lands in South Australia to hold on behalf of their people. It will no longer be possible to remove by proclamation an area of land from Aborigines without compensation. Power is also given to the Aborigines Land Trust to develop Aborigine lands and to obtain further lands as Aborigine lands and monies have been made available to the Aborigines Land Trust to proceed with this work. The second cause of resentment were the actual acts of discrimination against Aborigines as a people.

It was necessary to show that we believed as a community that racial discrimination was wrong. Therefore we are the one State in the Commonwealth to have passed a Prohibition of Discrimination Act. This gives effect to the United Nations Convention on Prohibition of Racial Discrimination and in South Australia today an overt act of discrimination in public services or accommodation, employment, the letting of dwelling houses and the making of covenants with regard to land is an offence. Next we had to introduce adequate education services, a housing programme and a flexible training programme for Aborigine people in South Australia, and this we have done. Now this is the sort of work in which a Labor Government can pioneer. We can see to it that in Labor-governed areas we become the pilot States for the development of social reform. We can see to it in the State sphere that monies are spent effectively on public housing. In South Australia we spend far more loan money proportionately than any other State, nearly three times the national average, in the public housing area. This means we are able to provide houses cheaply for workers and for a very large proportion of the working people in the State and so are able to contribute significantly to family incomes. But the most important role of State Labor Governments comes when there is a Commonwealth Labor Government in office. In order to get national development at the rate we need it in Australia we will have to have more investment in the public sector and more public undertakings directly involved with national development or in competing with private undertakings, to ensure that the social needs of the populace are met. As Galbraith has pointed out, we need to increase the proportion of our investment in the public sector. In such public undertakings the Commonwealth is in many cases prevented from engaging as it can only involve itself in public undertakings where these are in some way directly connected with the carrying out of the individual powers listed in Section 51 of the Commonwealth

Constitution. The State Governments, however, have no such limitation upon them. There are few undertakings in which State Governments could not engage except for lack of finance. Therefore in the area of public undertakings, a Commonwealth Labor Government would be able to give grants to the States pursuant to Section 96 of the Constitution on condition that these moneys were used for undertakings of specific kinds. A State Labor Government accepting such a grant would then be in a position to expand its investment in the public sector and the limitations of the present Federal Constitution would be avoided to some degree. Upon a Labor Government's assuming office in Canberra, the Labor-governed States of Australia which have no fears about entering into undertakings and enterprises simply because these are publicly undertaken could become the pilot areas of Australia for development of the kind which we have lacked from Canberra in the last 20 years where the Government has felt the basic development is really a matter for private investment. This could mean that with a Labor Government in Queensland and a Labor Government in Canberra we could see the kind of northern development about which people in this State have been talking for so long but of which we have seen so little. The duties then of State Labor Governments must be clear. To maintain public services as cheaply to the public as they can, to provide housing and education within the limits of their finances, to resist regressive taxation and endeavour to see that as much emphasis on progressive taxation and redistribution of incomes be maintained, to pioneer in the area of social reform, and to co-operate with a Federal Labor Government for national development.
